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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,792	10/18/2000	Yakov Kamen	007287.00020	5769
22907 7590 01/12/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER SALTARELLI, DOMINIC D	
			ART UNIT 2421	PAPER NUMBER
			MAIL DATE 01/12/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/691,792

Applicant(s)

KAMEN ET AL.

Examiner

DOMINIC D. SALTARELLI

Art Unit

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 21, 2008 has been entered.

Response to Arguments

2. Applicant's arguments filed November 21, 2008 have been fully considered but they are not persuasive.

First, applicants argue that Hendricks does not disclose determining at the broadcast receiving device if at least one of the one or more presentation criteria corresponds to the user request and modifying the program guide using the presentation criteria, and then argues that Beer does not disclose receiving presentation criteria from a broadcast source.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the presentation criteria are the specific options available to users for modifying the program guide. As such, Beer

teaches providing said options to a user for selection, therefor user input for a particular visual style or option is matching said user input against a finite number of stored presentation criteria. Further, Hendricks teaches all stored content at a set top box, from operating system code to individual graphic elements, are all downloaded from a headend. Consequently, when Hendricks is modified in view of Beer, this downloaded content includes the presentation criteria that enable the Beer disclosure to function as disclosed.

Second, applicants argue that Beer does not disclose determining whether one or more presentation criteria correspond to the user request and modifying the electronic programming guide using at least one of the presentation criteria.

In response, the applicant makes such arguments in absence of any clear definition of what the claimed 'presentation criteria' actually are, as applicant merely alleges that whatever they may be, Beer does not disclose them. The examiner understood the term to refer to the 'presentation solutions' disclosed in the specification and applied the combination of Hendricks and Beer in the manner in which the claims are enabled by the specification.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (5,798,785) [Hendricks] in view of Beer (5,793,368, of record).

Regarding claims 10, 12, 14, and 18, Hendricks discloses an apparatus comprising:

a processor (in set top 220); and
memory (also in set top 220) configured to store computer readable instructions that, when executed by the processor, cause the processor to perform a method comprising receiving electronic programming guide data from a broadcast source (menu information, col. 9 line 49 - col. 10 line 24 and col. 12, lines 54-63).

Hendricks fails to disclose receiving a user request to modify an electronic programming guide configured to display the electronic programming guide data.

In an analogous art, Beer teaches a method for allowing users to input requests to change the display characteristics of a user interface (col. 3, lines 16-67), providing the benefit of allowing users to select from a variety of different styles to suit their personal taste (col. 3, lines 23-25).

It would have been obvious at the time to a person of ordinary skill in the art to modify the apparatus of Hendricks to include receiving a user request to modify a user interface [electronic programming guide configured to display the

electronic programming guide data], as taught by Beer, for the benefit of allowing users to select from a variety of different styles to suit their personal taste.

Thus combined, the combination of Hendricks and Beer discloses receiving, from the broadcast source, one or more presentation criteria for making the user requested modification (Hendricks teaches receiving menu formats, templates, graphics, and backgrounds, col. 29, lines 19-38, wherein presentation criteria representing the types of changes a user is allowed to make to the interface); determining whether at least one of the presentation criteria corresponds to the user request (user requests for presentation criteria are a request for a particular visual style or characteristic, Beer, col. 3, lines 16-67); and in response to determining that the one of the presentation criteria corresponds to the user request, modifying the electronic programming guide using the presentation criteria to display an electronic programming guide in accordance with the user request (said changing of the user interface, as taught by Beer, wherein said interface is a program guide, as taught by Hendricks).

Regarding claims 11, 15, and 19, Hendricks and Beer disclose the method, computer readable media, and apparatus of claims 10, 14, and 18, wherein the modification requested includes a selection of a predefined display layout from a database storing a plurality of display layouts (Beer, col. 3, lines 50-67, wherein there are several UIL user interface descriptions to choose from, col. 3, lines 23-25).

Regarding claim 13, Hendricks and Beer disclose the method of claim 10, but fail to disclose the electronic programming guide comprises a three-dimensionally arranged set of surfaces textured by pre-processed broadcast program scheduling data.

Examiner takes official notice that the use of electronic programming guides comprised of a three-dimensionally arranged set of surfaces textured by pre-processed broadcast program scheduling data are notoriously well known in the art, as evidenced by the previously cited U.S. Patent No. 6,281,898 to Nikolovska, which provide the benefit of a more visually appealing user interface.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Hendricks and Beer to include the electronic programming guide comprises a three-dimensionally arranged set of surfaces textured by pre-processed broadcast program scheduling data, providing the benefit of a more visually appealing user interface.

Regarding claims 16 and 20, Hendricks and Beer disclose the computer readable medium and apparatus of claims 14 and 18, wherein the user request includes a change in a position of a portion of the electronic program guide (Beer teaches users adjust the positioning of individual aspects the user interface, the 'widgets', col. 6, lines 44-57).

Regarding claims 17 and 21, Hendricks and Beer disclose the receiving a user request includes detection of a gesture (pressing a button on a remote control to generate user input which will be interpreted and acted upon by the set top box, Hendricks, col. 10 line 64 - col. 11 line 12, according to the instructions downloaded from the broadcaster, Hendricks, col. 27, lines 25-44).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIC D. SALTARELLI whose telephone number is (571)272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dominic D Saltarelli/
Examiner, Art Unit 2421